Supreme Court, U.S.
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No. _____

In The Supreme Court of the United States

MICHAEL D. HAMILTON,

Petitioner,

v.

ROYAL INTERNATIONAL PETROLEUM CORPORATION and ELMER B. LITCHFIELD, Sheriff and Tax Collector,

Respondents.

On Petition For A Writ Of Certiorari To The Supreme Court Of Louisiana

PETITION FOR A WRIT OF CERTIORARI

PAUL R. BAIER
4222 Hyacinth Ave.
Baton Rouge, LA 70808
(225) 344-9815
Counsel of Record

DANIEL J. MCGLYNN
DOUGLAS A. LITTLEJOHN
MCGLYNN, GLISSON & KOCH
340 Florida Street
Baton Rouge, LA 70801
(225) 344-3555

Counsel for Petitioner

26 September 2006

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTION PRESENTED

Louisiana's Constitution provides a right to redeem property sold for delinquent taxes. The tax collector is required by statute to notify the property owner of the manner in which the property may be redeemed. The question presented is whether petitioner was denied due process of law when no notice of his right to redeem his property was afforded to him by the tax collector and the Louisiana Supreme Court refused to annul the tax sale on the ground that the statute requiring notice set forth no penalty for its violation.

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PETITI(FOR A WRIT OF CERTIORARI

In the decision below, the Louisiana Supreme Court held that the Due Process Clause of the Fourteenth Amendment does not require annulment of a tax sale where no notice of the manner of redemption was afforded by the tax collector to the property owner in violation of the collector's statutory duty. This conclusion is fundamentally at odds with this Court's due process regard for the right of redemption, with this Court's holding in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982), and with this Court's reasoning last Term in *Jones v. Flowers*, 547 U.S. ___, 126 S. Ct. 1708 (2006). The right of redemption and the right to notice of the manner thereof protect property interests not tied to the tax sale itself. Due process attaches at each stage of what, under state law, is a multi-step scheme. Otherwise the right of redemption long recognized by this Court is rendered nugatory:

> A law authorizing the redemption of lands so sold, ought to receive a liberal and benign construction in favor of those whose estates will otherwise be divested. . . . It would, therefore, seem not to be necessary for the purposes of justice, or to effectuate the objects of the law, that the right to redeem should be narrowed down by a strict construction.

Dubois v. Hepburn, 10 Pet. (35 U.S.) 1, 22-23 (1836). The decision below also conflicts with the holdings of other state courts of last resort. *McCann v. Scaduto*, 71 N.Y.2d 164, 524 N.Y.S.2d 398 (N.Y. 1987); *Tax Lien Services v. Hall*, 919 P.2d 396 (Mont. 1996). Certiorari should be granted on the important due process question presented – "a new wrinkle," *Jones v. Flowers*, 547 U.S., at ___, 126 S. Ct., at 1714, to be sure, but one equally worthy of this Court's high trust.

OPINIONS BELOW

The February 22, 2006 merits opinion of the Louisiana Supreme Court, 2006 WL 408540, is unreported to date. It appears herein, a-1. The June 30, 2006 order of the Louisiana Supreme Court denying rehearing, *2006 La. LEXIS 2130*, is unreported and appears herein, a-34. The March 2, 2005 opinion of the Louisiana First Circuit Court of Appeal is reported at 906 So.2d 627 (La. App. 1st Cir. 2005) (en banc) and appears herein, a-17.

JURISDICTION

The judgment of the Louisiana Supreme Court was entered on February 22, 2006. Petitioner timely sought rehearing, which was denied on June 30, 2006. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution states in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law[.]"

Article 7, § 25 of Louisiana's Constitution provides in relevant part:

> Section 25. (A) Tax Sales. There shall be no forfeiture of property for nonpayment of taxes. However, at the expiration of the year in which the taxes are due, the collector, without suit, and after giving notice to the delinquent in the manner

provided by law, shall advertise for sale the property on which the taxes are due. The advertisement shall be published in the official journal of the parish or municipality, or, if there is no official journal, as provided by law for sheriffs' sales. On the day of the sale, the collector shall sell the portion of the property which the debtor points out. If the debtor does not point out sufficient property, the collector shall sell immediately the least quantity of property which any bidder will buy for the amount of taxes, interest, and costs. The sale shall be without appraisement. A tax deed by a tax collector shall be prima facie evidence that a valid sale was made.

(B) Redemption. (1) The property sold shall be redeemable for three years after the date of recordation of the tax sale, by paying the price given, including costs, five percent penalty thereon, and interest at the rate of one percent per month until redemption.

La. R.S. 47:2180(A)(1)(b), as added by Acts 1997 Regular Session, No. 984, effective August 15, 1997, provides:

On the second day of January of each year, or as soon thereafter as possible, in each year following the year in which the original notice of delinquency is made pursuant to Subparagraph (a) herein, the tax collector shall address to each taxpayer who has not paid all the taxes which have been assessed to him on immovable property a written notice in the manner provided herein. The notice shall specify the property upon which the taxes are delinquent, the amount

> of taxes due, and the manner in which the property may be redeemed. The notice shall be made each year until the property is no longer redeemable as provided in Article VII, Section 25(B) of the Constitution of Louisiana. The cost of mailing the notice shall be considered cost for purposes of redemption.

La. R.S. 47:2221. Right to redeem provides in pertinent part:

> Property sold at a tax sale shall be redeemable in accordance with Section 25 of Article VII of the Constitution of 1974.

STATEMENT

A. Factual Background.

Petitioner Michael D. Hamilton, a retired state employee, owned a home in East Baton Rouge Parish, Louisiana, which his father built and in which Mr. Hamilton, who is 72 years old, has lived all his life. In April 1995, the Sheriff/Tax Collector sent Mr. Hamilton a duplicate tax bill by certified mail. Hamilton signed a return receipt. Record on Appeal, p. 86.[1] In fine print on a 5" x 7" card, the Sheriff advised: "If not paid within 20 days from the date of this notice, I shall seize, advertise

[1] The Record on Appeal (hereinafter cited as "Record") is the complete record as lodged in the First Circuit Court of Appeal and in the Louisiana Supreme Court. It includes the transcript of trial testimony, Nineteenth Judicial District Court, Parish of East Baton Rouge, No. 465,644, March 11, 2002, Honorable Michael Caldwell, Judge, presiding.

and sell sufficient property to pay said taxes, together with all the interest, penalties and costs." Joint Stipulation, Exhibit E, Record, p. 81. After discussing the matter with someone at his mortgage company, Mr. Hamilton believed it was taken care of. Record, p. 33. Taxes due amounted to $27.09. The house was worth between eighty and ninety thousand dollars. Record, p. 85. The balance due on his mortgage was between twelve and thirteen thousand dollars. Record, p. 83. Mr. Hamilton did not believe from the Sheriff's delinquency card that his home would be sold for twenty-seven dollars. Record, p. 88.[2]

On June 12, 1995, Mr. Hamilton's house was sold at a tax sale to Royal International Petroleum Corporation (RIPCO) for $71.68, consisting of $27.09 in unpaid taxes, interest of $1.59 and costs of $43.00. Mr. Hamilton received no notice by mail from the Sheriff of the tax sale or of a tax deed recorded in RIPCO's name on June 30, 1995.[3]

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[2] Hamilton testified that he understood from the language of the Sheriff's postcard that, "They were going – my house was going to be sold, or something was going to happen there." Record, p. 88.

"Q. When you received that piece of paper, did it lead you to believe that your house would be sold –

"A. No.

"Q. – for twenty-seven dollars?

"A. No, that's what I'm saying. Not for that – No, I did not."

Id.

[3] "Q. Were you ever apprised that your house had been sold? Did you ever receive anything from the sheriff saying your house had been sold?

"A. No."

Record, p. 89.

During Mr. Hamilton's three-year period of redemption, the Louisiana Legislature changed the law to require notice each year to the delinquent tax payer by certified mail, return receipt requested, of the manner in which the property could be redeemed. It is undisputed that the Sheriff did not send Hamilton this required notice.[4] The three-year redemption period lapsed on June 30, 1998.

B. Procedural Background.

Suit to annul the tax sale was brought against RIPCO and Sheriff Litchfield. Petitioner Hamilton specifically alleged that the Sheriff, in violation of the Due Process Clause of the Fourteenth Amendment, had not afforded him adequate notice of the threatened loss of his house, of the date, time, and place of the tax sale, and of the manner of redemption. Petition, Suit to Annul Tax Sale, 10/15/99, Paragraph 4, Record, pp. 7-8; Amending and Supplemental Petition, 4/26/01, Paragraphs 4, 11, Record, pp. 60, 63-64. The trial court dismissed Hamilton's suit, holding that the new statutory requirement of notice of the manner of redemption could not be applied retroactively and that due process was satisfied: – "Basically, the plaintiff's argument is that it's just not right and it's just not fair. And I agree with plaintiff. But I don't think that is what due process requires." Oral Reasons for Judgment, Record, p. 69. "Due process does not require fairness, it does not require equity; it requires what it says – due process.

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[4] "The Sheriff and Tax Collector did not send notice in 1998 as required by the revision of Louisiana Statute 47:2180(A)(1)(B) as amended in 1997." Joint Stipulation of Facts, Paragraph 5, Record, p. 31.

Some process that is established by law to give adequate notice." *Id.*, p. 70.

On appeal to the Louisiana First Circuit Court of Appeal, Hamilton's assignments of error specifically averred that: "Alternatively, the trial court erred in not finding that the tax sale and procedures relati g thereto violated the Due Process clause[ ] of the United States . . . Constitution[ ]." 609 So.2d, at 630, App. a-19, *infra*. The First Circuit Court of Appeal reversed the trial court, annulling the tax sale upon payment by Hamilton to RIPCO of the purchase price, all taxes and costs, and ten percent per annum interest. 609 So.2d, at 635, App. a-29, *infra*.

The Louisiana Supreme Court reversed the First Circuit: "It was undisputed that plaintiff herein received actual notice of the impending tax sale of his property. However, we decline to extend due process requirements to find that a post-sale notice is *further* required. Due process fundamentally requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner *before* the state deprives the person of property, which was done in this case." App. a-15.

Hamilton's petition for rehearing challenged the Court's assumption that the pre-tax sale delinquency card adequately informed him that the Sheriff would sell *his house* for $27.09 taxes due. The Louisiana Supreme Court *sua sponte* requested the parties to brief the question whether the pre-sale notice of delinquency satisfied due process. App. a-32, *infra*. Chief Justice Calogero and Justice Kimball, who joined the majority opinion reversing the First Circuit, now voted to grant rehearing, which was denied 4-3. App. a-34, *infra*.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Conflicts with this Court's Precedents, with Holdings of Other State Supreme Courts, and Denies Petitioner's Right of Redemption Without Due Process of Law.

The decision below is in conflict with this Court's due process holding in *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 432 (1982), *viz.*: the Louisiana Supreme Court's analysis "misunderstands the Constitution's due process guarantee." The Louisiana Constitution and state statutes confer an absolute right to redeem property sold for tax delinquency. Once state law creates such a property right, due process of law requires notice and an opportunity to satisfy the tax debt before the right of redemption is lost. "The right to a hearing is meaningless without notice." *Nelson v. City of New York*, 352 U.S. 103, 115 (1956). Here, the Louisiana Supreme Court cut off constitutional due process by its crabbed reading of petitioner Hamilton's right of redemption. While the Louisiana Supreme Court's interpretation of Revised Statutes Title 47, Chapter 5, "Tax Sales and Redemptions," is none of this Court's business, due process of law is. "What the statute required was for the Supreme Court to determine; whether, as determined, it constituted due process is for us to decide." *Ballard v. Hunter*, 204 U.S. 241, 260 (1907). Minimum procedural requirements are a matter of federal law, they are not diminished by the fact that a state supreme court is satisfied with less. "Indeed, any other conclusion would allow the State [Supreme Court] to destroy at will virtually any state-created property interest." *Logan v. Zimmerman Brush Co.*, 455 U.S., at 422.

A. The Right of Redemption Conferred by Louisiana's Constitution and Statutes Is a Property Interest Protected by the Due Process Clause of the Fourteenth Amendment.

Here it is enough to cite Article 7, § 25(B) of Louisiana's Constitution and La. R.S. 47:2221 which confer upon "a tax debtor-owner an unfettered right to reclaim his property within three years from recordation of the tax sale. This was intended regardless of the procedural perfection of notice to the owner and the satisfaction of other technical requirements prior to the sale." *Harris v. Estate of Fuller*, 532 So.2d 1367, 1370 (La. 1988) (reciting records of Louisiana's Constitutional Convention of 1973). And more: "An action to redeem property sold for nonpayment of taxes does not require any showing of irregularity in the tax or sale process. The tax debtor may redeem at will even if he intentionally or negligently failed to pay his taxes." *Id.*, at 1370-71. It is strange but true, that the decision below ignores this earlier judicial construction and renders the right to redeem nugatory. In this regard, the decision below is contrary to the due process holding of the Montana Supreme Court, *viz.*:

> This Court has long recognized that redemption generally is 'a vested property right . . . of which the owner cannot be legally deprived except and only . . . by the giving of notice.' *Lowery v. Garfield County* (1949), 122 Mont. 571, 582, 208 P.2d 478, 484. Both the right to redemption and the right to bring a cause of action are property interests protected under the Due Process Clause of the Fourteenth Amendment.

Tax Lien Services v. Hall, 919 P.2d 396, 399 (Mont. 1996), citing *Tulsa Professional Services v. Pope*, 485 U.S. 478

(1988), and *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982).

B. The Requirement of Notice of the Right of Redemption Conferred by State Law Is Fundamental to Due Process.

"Even if the right to redeem were not constitutionally rooted, once granted by statute it is protected by the Due Process Clause." *Dow v. State*, 396 Mich. 192, 206, 240 N.W.2d 450, 457 n.21 (Mich. 1976). At a minimum, due process requires "notice and an opportunity for hearing appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 801 (1983). Due regard for "the practicalities and peculiarities of the case," 339 U.S., at 314, indicates that notice of the right of redemption is essential to "protect[] property owners who are down on their luck from 'tax sale sharks,'" *Harris v. Estate of Fuller*, 532 So.2d, at 1370. Redemption statutes "favor those landowners who are likely to be in arrears, either because they are too poor or because they lack ready cash." *Balthazar v. Mari Ltd.*, 301 F. Supp. 103, 106 (N.D. Ill. 1969) (redemption under Illinois law; three-judge court), *aff'd*, 396 U.S. 114 (1969). "[N]otice which does not afford a realistic opportunity to produce the funds necessary to avoid forfeiture of the title or sell the encumbered property does not afford due process." *McCann v. Scaduto*, 524 N.Y.S.2d, at 404 (N.Y.1987).

The decision below ignores the multiple stages of Louisiana's tax foreclosure process. The initial event is the sale of the property. The second event is the termination of the right of redemption. "The occurrence of this second event must follow the first event in order to terminate all rights of interested parties, but is independent of the first

event in terms of timing and process." Frank S. Alexander, Tax Liens, Tax Sales, and Due Process, 75 Ind. L. J. 747, 780 (2000). As Professor Alexander points out,

> Both *Mullane* and *Mennonite* leave unresolved this issue of whether 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action' requires a local government to inform the parties at the very first step in the tax foreclosure process, or only at the very last step in the termination of the rights of the interested parties.

Id., at 778. The Louisiana Supreme Court has confined due process analysis to the first step only. See also *Calhoun v. Jennings*, 512 N.E.2d 178, 184 (Ind. 1987) ("We view the two year period of redemption following a tax sale as analogous to the self-executing feature of the Indiana Mineral Lapse Act involved in *Texaco*[, *Inc. v. Short*, 454 U.S. 516 (1982)].").

Contrariwise, other state courts of last resort have squarely held that due process requires notice of redemption rights and an opportunity to redeem in accordance with statutory procedures. *McCann v. Scaduto*, 71 N.Y.2d 164, 524 N.Y.S.2d 398 (N.Y.1987); *Tax Lien Services v. Hall*, 919 P.2d 396 (Mont. 1996). See also *Fields v. Evans*, 484 N.E.2d 36, 38 (Ind.App. 2 Dist. 1985) ("Given the untoward result of a failure to redeem, notice to interested parties of the right to redeem is required as an element of due process."). Given the "momentous consequences," *McCann v. Scaduto*, 524 N.Y.S.2d, at 404, of tax foreclosure of real property, this Court should resolve the conflict among state supreme courts by holding that written notice

of the right to redeem is fundamental to due process,[5] even on the Louisiana Supreme Court's mistaken assumption[6] that the pre-sale notice of delinquency satisfied due process. The question presented is of national import: "Individual freedom finds tangible expression in property rights. At stake in this and many other forfeiture cases are the security and privacy of the home and those who take shelter in it." *United States v. James Daniel Good Real Property*, 510 U.S. 43, 61 (1993).

C. Due Process Requires the Traditional Remedy of Nullity of the Tax Sale where Notice of the Right of Redemption Is Not Afforded.

The Louisiana Supreme Court conceded that due process requires nullification of a tax sale where the tax

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[5] Whether due process requires notice of the right of redemption was presented in *Mennonite,* but not reached. See 462 U.S., at 888 n.6. In *Jones v. Flowers,* 359 Ark. 443, 2004 WL 2609800 (2004), the Arkansas Supreme Court refused to reach the same question because it was not properly raised and fully developed. Contrariwise, the record herein shows that this question was expressly raised on behalf of Michael Hamilton in the trial court below, Amending and Supplemental Petition, Paragraph 11, Record, pp. 63-64, adjudicated therein, Oral Reasons for Judgment, Record, pp. 69-70, and finally determined by the Louisiana Supreme Court, App. a-15, *infra.*

[6] *Contra, Wenatchee Reclamation Dist. v. Mustell*, 684 P.2d 1275, 1279 (Wash. 1984) ("Hamilton was not informed of the time and place at which his property would be sold"). The Sheriff's sale of petitioner Hamilton's property herein for delinquent taxes was advertised in the customary fine print of the Baton Rouge *Advocate,* Record, pp. 19-22, but no notice of the sale was mailed to Mr. Hamilton at his house by the Sheriff. Record, p. 33. "It is common knowledge that mere newspaper publication rarely informs a landowner of proceedings against his property." *Walker v. City of Hutchinson*, 352 U.S. 118, 116 (1956) (Opinion of the Court, per Justice Hugo L. Black). "In too many instances notice by publication is no notice at all." *Id.*, at 117.

collector fails to give the mandatory notice of delinquency and impending sale. This is true even though La. R.S. 47:2180 is silent on the question of remedy for violation of the statute. The resulting nullity "is mandated by well established due process requirements." App. a-14, *infra*. If this Court were to hold, contrary to the Louisiana Supreme Court, that Hamilton was denied due process of law by the Sheriff's failure to afford him notice of the manner of redemption as required by La. R.S. 47:2180(A)(1)(b), the due process remedy of nullity of the tax sale and restoration of Mr. Hamilton's redemption rights should apply. This remedy is venerable under Louisiana law. "The legal principles in relation to forced alienations of property in payment of taxes, are well settled. They require purchasers under such alienations, in order to give validity to titles thus acquired, to show a strict fulfilment on the part of the officers of government, of all formalities imposed by law." *Spillers Heirs v. Baumgard*, 4 La. 206, 207 (La. 1832) (per Mathews, J.), 1832 WL 830 (La.). Absent compliance, "a sale like that under which the defendant claims title must be considered as void," *id.* The same remedy has been applied as a matter of due process by the New York Court of Appeals, *McCann v. Scaduto*, 524 N.Y.S.2d, at 404, and the Montana Supreme Court, *Tax Lien Services v. Hall*, 919 P.2d, at 400.

CONCLUSION

"In this case, the State is exerting extraordinary power against a property owner – taking and selling a house he owns." *Jones v. Flowers*, 547 U.S., at ___, 126 S.Ct., at 1721. To paraphrase Chief Justice Roberts's opinion for the Court only slightly, "It is not too much to insist that the State do a bit more to attempt to let him know" about his redemption rights. *Id.*

The petition for certiorari should be granted.

Respectfully submitted,

PAUL R. BAIER
4222 Hyacinth Ave.
Baton Rouge, LA 70808
(225) 344-9815

Counsel of Record

DANIEL J. MCGLYNN
DOUGLAS A. LITTLEJOHN
MCGLYNN, GLISSON & KOCH
340 Florida Street
Baton Rouge, LA 70801
(225) 344-3555

Counsel for Petitioner

2006 WL 408540 (La.)

Supreme Court of Louisiana.

Michael D. HAMILTON

v.

ROYAL INTERNATIONAL PETROLEUM CORPORATION and Elmer B. Litchfield, Sheriff and Tax Collector of the City of Baton Rouge.

No. 2005-C-846.

Feb. 22, 2006.

Rehearing Denied June 30, 2006.

Breazeale, Sachse & Wilson, Charles G. Blaize, Jr., Houma, for Applicant.

Hebert, Spencer, Cusimano & Fry, V. Charles Cusimano, Greco & Greco, Leu Anne Greco, McGlynn, Glisson & Koch, Daniel J. McGlynn, Baton Rouge, for Respondent.

Thomas Allen Usry, John Franklin Weeks, II, Craig Edmond Frosch, New Orleans, for Sheriffs' Association Inc. Amicus Curiae.

Jack Ashton Grant, Oldlen Charles Toups, Jr., Gretna, Martin E. Landrieu, Suzanne Karen Scalise, New Orleans, for Cox Communications Louisiana L.L.C. Amicus Curiae.

KNOLL, Justice.*

This case concerns whether a tax sale for delinquent taxes on immovable property should be annulled for failure of the Sheriff, as Ex Officio Tax Collector, to send a

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* Retired Judge Robert Klees assigned as Associate Justice *ad hoc*, sitting for Associate Justice Chet D. Traylor, recused.

notice to the taxpayer informing him, *inter alia*, of the manner in which the property may be redeemed, as mandated by La.Rev.Stat. 47:2180A(1)(b). While the tax sale was properly noticed and executed, the Legislature subsequently amended the law before the three year peremptive period had ended for plaintiff, Michael D. Hamilton, to redeem his property. This change in the law calls into question the validity of the tax sale. The trial court found the tax sale valid. The court of appeal reversed. For the following reasons we reverse the court of appeal, finding the failure to send plaintiff the post-tax sale notice mandated by La.Rev.Stat. 47:2180A(1)(b) after the properly noticed tax sale and execution thereof does not violate due process, as he was afforded an opportunity to be heard at a meaningful time and in a meaningful manner before the tax sale and further, neither does the statute require annulling the tax sale as a penalty for failing to send such a notice.

FACTS AND PROCEDURAL HISTORY

Plaintiff, Michael D. Hamilton, owned a residence in Baton Rouge, Louisiana that he had inherited from his father and lived in all of his life.[1] A tax notice was sent to him for 1994 city/parish ad valorem taxes on the property, which he failed to pay. In April 1995, a notice of tax delinquency was sent to him by certified mail. Mr. Hamilton signed a return receipt indicating receipt of the notice.

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[1] The property was described in the tax notice and the tax deed as follows:

> Lot 12 Sq. 7 Roseland Terrace, 40 Ft., N. Side Cherokee St. X 120 Ft. Land, 1000 Imp. 1790. 1982 (P-40, 988), E. 10 Ft. Lot 13 Sq. 7 Roseland Terrace, 10 Ft. N. Side Cherokee X 120 Ft. Land 250

This notice advised plaintiff that if the delinquent taxes were not paid within twenty days from the date of the notice, the sheriff and tax collector would seize, advertise and sell sufficient property to pay the taxes together with all interest, penalties and costs. The taxes remained unpaid, and the property was advertised for sale. On June 12, 1995, the property was sold at a tax sale to Royal International Petroleum Corporation (RIPCO) for $71.68, consisting of $27.09 in unpaid taxes, interest of $1.59 and costs of $43.00. The sheriff executed a tax deed in RIPCO's name, which was recorded on June 30, 1995. The record shows RIPCO paid the ad valorem taxes assessed for this property for the years of 1995, 1996, 1997, 1998 and 1999.

During the three year peremptive period Mr. Hamilton could redeem his property, the Legislature changed the law to require notice during this period to inform the property owner of the manner in which the property could be redeemed. Prior to this change in the law, the tax collector was not constitutionally or legislatively required to send this post-tax sale notice. At the time of the tax sale, La.Rev.Stat. 47:2180 provided, in relevant part:

> § 2180 Immovable property, notice of delinquency
>
> A. On the second day of January each year, or as soon thereafter as possible, the tax collector shall address to each taxpayer who has not paid all the taxes, which have been assessed to him on immovable property, or to the record owner of the property for which the taxes are delinquent, or to the actual owner in the event the record owner is deceased, written or printed notice in the manner provided for herein that his taxes on immovable property must be paid within twenty days after the service or mailing of the notice, or that the property will be sold according to law.

B. The tax collector shall send to each taxpayer by certified mail, with return receipt requested, the notice prescribed herein, provided that in cities containing a population over fifty thousand persons, the tax collector may either send this notice by certified mail or make personal or domiciliary service on the taxpayer. In the event the certified notice is returned as being undeliverable by the post office, the tax collector may comply with Article 7 Section 25 of the Constitution of Louisiana and the provisions of this Section by advertising the tax debtor's property in the advertising required for unknown owners in Subsection C of this Section. . . .

C. The tax collector shall publish one general notice substantially in the form set forth herein, addressed to all unknown owners of assessed immovable property situated in his parish, and to nonresident owners of such property whose post office address is unknown, in which he shall describe the property as described in the tax roll. Such notice shall be published once a week for two weeks in a newspaper published in his parish, or if there be none published in the parish, then such notice shall be given in the manner provided by law for judicial sales. He shall pay for the publication, and shall be entitled to collect as costs therefor the pro rata share of the publication costs from each unknown owner or from the property assessed to him. The collector shall certify on his tax rolls that he has published the notices, and the certificate on either roll shall make full proof thereof until disproved in a judicial proceeding.

In Act 1997, No. 984, the Legislature amended this statute, designating subsection A as subparagraph A(1)(a)

and adding subparagraph A(1)(b) and paragraph A(2). The amendment added the following pertinent provision:

> (b) On the second day of January of each year, or as soon thereafter as possible, in each year following the year in which the original notice of delinquency is made pursuant to Subparagraph (a) herein, the tax collector shall address to each taxpayer who has not paid all the taxes which have been assessed to him on immovable property a written notice in the manner provided herein. The notice shall specify the property upon which the taxes are delinquent, the amount of taxes due, and the manner in which the property may be redeemed. The notice shall be made each year until the property is no longer redeemable as provided in Article VII, Section 25(B) of the Constitution of Louisiana. The cost of mailing the notice shall be considered cost for purposes of redemption.

Act 984 did not provide a specific effective date and thus, became effective on August 15, 1997, the general effective date for acts of the 1997 Regular Session.

The three year peremptive period to redeem the property at issue expired on June 30, 1998. RIPCO's agent, Irion Bordelon, telephoned Mr. Hamilton in 1998 and informed him RIPCO had purchased his property at tax sale. It was disputed at trial when this conversation occurred and whether Mr. Bordelon informed Mr. Hamilton of his right to redeem the property and the amount necessary to do so. After the three year period to redeem the property had prescribed, RIPCO offered to convey the property by quitclaim deed to Mr. Hamilton for $2,555.24. An invoice dated January 1, 1999, was sent to

Mr. Hamilton from RIPCO for this amount.[2] The offer was not accepted, and plaintiff filed suit to annul the tax sale.

After trial on the merits, the trial court rendered judgment in favor of the defendants, dismissing the suit with prejudice, at plaintiff's cost. In oral reasons for judgment, the court stated to retroactively apply La.Rev.Stat. 47:2180A(1)(b) or to penalize RIPCO for the sheriff's failure to comply with La.Rev.Stat. 47:2180A(1)(b) was not appropriate. The trial court seemed to have much sympathy for the plaintiff, but found it was compelled by the constitution and statutes to uphold the tax sale.

A majority of the First Circuit Court of Appeal, sitting *en banc*, reversed. The court held application of La.Rev.Stat. 47:2180A(1)(b) did not operate retroactively because it neither evaluates the condition of a past act nor modifies or suppresses the effects of a right already acquired. The court further held the tax collector's failure to give the notice statutorily mandated in La.Rev.Stat. 47:2180A(1)(b) rendered the tax sale a nullity. We granted Royal International Petroleum Corporation's writ to further review this important issue. *Hamilton v. Royal Int'l Petroleum Corp.*, 05-846 (La.6/3/05), 931 So.2d 1091.

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[2] The invoice provides the following itemization:

Taxes and Interest	$1555.24
Legal Fees	$ 350.00
Research of Conveyance & Mortgage Records	$ 150.00
Time and Expense for Tax Payment (4 years)	$ 350.00
Profit on Investment	$ 150.00
	$2554.24

DISCUSSION

The First Circuit Court of Appeal employed a two-step analysis in annulling the tax sale. The court of appeal first examined whether La.Rev.Stat. 47:2180A(1)(b) was operating retroactively if applied to a tax sale that occurred prior to its enactment. Determining La.Rev.Stat. 47:2180A(1)(b) did not operate retroactively because it neither evaluates the condition of the legality of a past act nor modifies or suppresses the effects of a right already acquired, the court continued with the second step of the analysis. The second step of the analysis focused on whether the tax collector's failure to perform its mandatory duty entitled the plaintiff to annulment of the tax sale. The majority of the court of appeal implicitly found Louisiana's constitutional due process tolerated "nothing less than strict compliance with the procedures involved in divesting someone of his property." *Hamilton v. Royal Int'l Petroleum Corp.*, 03-2660, p. 8 (La.App. 1 Cir. 3/2/05), 906 So.2d 627, 633, quoting *United Fin. Group, Inc. v. Davis*, 481 So.2d 726, 729 (La.App. 1 Cir. 1985). Finding no error in the court of appeal's determination that this statute did not evaluate the conditions of the legality of a past act or disturb, modify or suppress any acquired or vested right and thus, was not operating retroactively, we pretermit discussion of this issue. However, we find the court of appeal erred in finding due process further requires this post-tax sale notice, when the plaintiff had already been afforded an opportunity to be heard at a meaningful time and in a meaningful manner before he was divested of his property. Thus, the tax sale should not have been annulled.

We begin by noting that although the Legislature amended La.Rev.Stat. 47:2180 to require mandatory post-tax sale notice to the tax debtor, the Legislature did not provide a penalty if the required notice was not sent. Thus, in resolving whether we should annul this tax sale, we look to what due process is required during the three year peremptive period.[3]

The Louisiana Constitution provides, in pertinent part:

> (A) Tax Sales. (1) There shall be no forfeiture of property for nonpayment of taxes. However, at the expiration of the year in which the taxes are due, the collector, without suit, and after giving notice to the delinquent in the manner provided by law, shall advertise for sale the property on which the taxes are due. The advertisement shall be published in the official journal of the parish or municipality, or, if there is no official journal, as provided by law for sheriffs' sales, in the manner provided for judicial sales. . . .

La. Const. Art. VII, § 25(A)(1).

It is well settled the giving of notice of delinquency required by the Louisiana Constitution and La.Rev.Stat. 47:2180 is mandatory and failure to give this notice is

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[3] La. Const. art. VII, § 25(B)(1) provides:

The property sold shall be redeemable for three years after the date of recordation of the tax sale, by paying the price given, including costs, five percent penalty thereon, and interest at the rate of one percent per month until redemption. This three year period is peremptive and cannot be suspended or interrupted. *Harris v. Estate of Fuller*, 532 So.2d 1367, 1369 (La.1988).

constitutional grounds for the annulment of the sale. *Childress v. Johnson*, 387 So.2d 1217, 1219 (La.App. 1 Cir. 1980), *writ denied*, 393 So.2d 744 (La.1980); *Garry v. Zor, Inc.*, 181 So.2d 828, 832 (La.App. 4 Cir.1966); *Doll v. Montgomery*, 58 So.2d 573, 576 (La.App.Orleans 1952); *Di Giovanni v. Cortinas*, 216 La. 687, 44 So.2d 818, 820-821 (1950), *cert. denied sub nom. Cortinas v. Di Giovanni*, 340 U.S. 801, 71 S.Ct. 46, 95 L.Ed. 589 (1950); *Jones v. Curran*, 156 La. 1055, 101 So. 415, 416 (1924).

Under both federal and state constitutional mandates, notice to a property owner of the potential loss of his property is a matter of due process. *Giordano v. MacDonald*, 98-2035, p. 6 (La.App. 4 Cir. 3/10/99), 729 So.2d 760, 762, *writ denied*, 99-0986 (La.6/18/99), 745 So.2d 22 (citing *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 103 S.Ct. 2706, 77 L.Ed.2d 180 (1983)). Although *Mennonite* concerned the due process rights of a mortgagee with respect to notice of a tax sale, its holding and *ratio decidendi* are applicable to the due process rights of the property owner. Prior to an action which will affect an interest in life, liberty or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide "notice reasonably calculated, under all circumstances, to apprise interested persons of the pendency of the action and afford them an opportunity to present their objections." *Mennonite*, 462 U.S. at 795, 103 S.Ct. at 2709 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 94 L.Ed. 865 (1950)). The Court held:

> Since a mortgagee has a legally protected property interest, he is entitled to notice reasonably calculated to apprise him of a pending tax sale. *Cf. Wiswall v. Sampson*, 14 How. 52, 55 U.S. 52,

> 67, 14 L.Ed. 322 (1852). When the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service. But unless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy the mandate of *Mullane*.

Mennonite, 462 U.S. at 798, 103 S.Ct. at 2711.

Although the notice to the property owner informing him that his taxes are delinquent and his property will be sold if the taxes are not paid is clearly required by La. Const. Art. VII, § 25(A) and the Due Process Clauses of both the federal and state constitutions, it does not necessarily follow that subsequent post-tax sale notice, such as provided for in La.Rev.Stat. 47:2180A(1)(b), is constitutionally mandated.

In the case *sub judice*, the court of appeal found the tax collector's failure to provide the post-tax sale notice mandated in La.Rev.Stat. 47:2180A(1)(b) resulted in a fatal defect in the proceedings such that the sale was a nullity. The court found its conclusion was supported by the holding in *United Fin. Group, Inc. v. Davis*, 481 So.2d 726 (La.App. 1 Cir. 1985). That case concerned a tax collector's failure to give a statutorily required post-adjudication notice to two tax debtors whose property was adjudicated to the state for unpaid taxes. It was undisputed the required notices of delinquency and impending sale were properly given by the tax collector prior to the property being offered at tax sale. The tax debtors sought to annul the tax sale because of the tax collector's failure

to notify them of the adjudication as mandated by La.Rev.Stat. 47:2186.[4] In affirming the trial court's judgment annulling the tax sale, the *United* court held La. Const. art. I, § 2 tolerates nothing less than strict compliance with the procedures involved in divesting someone of his property. *United*, 481 So.2d at 729.

After careful and studied review, we find the statutory requirement for post-tax sale notice specifying the property upon which the taxes were delinquent, the amount of taxes due and the manner in which the property may be redeemed is not necessary to satisfy due process. The *United* court provided no authority to support its extension of due process, and this was the sole authority the court of appeal relied upon to find the instant tax sale was a nullity for the tax collector's failure to provide the notice mandated by La.Rev.Stat. 47:2180A(1)(b). Although it is well established that proof of an inadequate property description, deficient advertisement, or improper notice of delinquency is sufficient to nullify a tax sale, *United*, 481 So.2d at 729, the strict compliance is with regard to the *initial notification* of delinquency and pending sale. *See* La. Const. Art. VII, § 25(A)(1); La.Rev.Stat. 47:2180A(1)(a).

Under the Fourteenth Amendment to the United States Constitution and La. Const. Art. I, § 2, a person is

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[4] La.Rev.Stat. 47:2186 provides, in relevant part:

. . . The tax collector shall, immediately after adjudication to the state, or at as early a date thereafter as possible notify the tax debtor in writing whether by actual service in case of residents, by mail in case of nonresidents whose post office address is known, and by one publication in a newspaper of the parish wherein he exercises his function in case of unknown owners and nonresidents whose post office address is unknown, that within thirty days he will take actual corporeal possession of the property so adjudicated. . . .

protected against a deprivation of his life, liberty or property without "due process of law." *Fields v. State through Dep't of Public Safety and Corrections*, 98-611, p. 6 (La.7/8/98), 714 So.2d 1244, 1250. The fundamental requirement of procedural due process is notice and the opportunity to be heard at a meaningful time and in a meaningful manner. *Allain v. Martco P'ship*, 02-1796, p. 6 (La.5/23/03), 851 So.2d 974, 979; *Fields*, 98-611 at p. 6, 714 So.2d at 1250. Our Constitution, La. Const. Art. VII, § 25(A), and our statutes, La.Rev.Stat. 47:2180A(1)(a), provide for notice, mandated by due process guarantees, to a property owner whose property will be sold at a tax sale to satisfy the debt of unpaid ad valorem taxes. Whether a tax collector has properly notified a delinquent taxpayer of the impending sale, fundamental to the person's protection against deprivation of his property without due process of law, must be closely scrutinized by our courts should the notice be challenged. But we can find no authority to extend this due process right to a subsequent notice post-tax sale. The notice informing the property owner his taxes are delinquent and his property will be sold if the taxes are not paid protects the procedural due process rights of the property owner and affords him the opportunity to be heard at a meaningful time and in a meaningful manner prior to the sale of his property. The post-tax sale notice mandated by La.Rev.Stat. 47:2180A(1)(b) does not concern an opportunity to be heard at a meaningful time and in a meaningful manner; that time was prior to the tax sale, before he was divested of his property.

It is undisputed the tax collector was in strict compliance in notifying Mr. Hamilton of his delinquent property taxes and the pending sale if the delinquent taxes were not paid. The tax sale met all well established due process

requirements. To now hold due process was not met because a *post-tax sale* notice was not sent would be adding requirements that are not fundamentally established to meet due process. The opportunity for Mr. Hamilton to be heard at a meaningful time and in a meaningful manner was *before* he became divested of his property. At the tax sale, Mr. Hamilton became divested of his property in strict compliance with his due process rights. We do not find fundamental due process is further required to inform him that, in his case, he may redeem his property for a period of less than one year. We are further buttressed in this finding by noting the Legislature did not require as a penalty that the tax sale be annulled if the post-tax sale notice is not sent and neither is it required in our constitution.

We now extend our discussion to determine whether any statutory remedy was supplied by the Legislature for the tax collector's failure to comply with the mandated requirement of post-tax sale notice.

The starting point for the interpretation of any statute is the language of the statute itself. *Richard v. Hall*, 03-1488, p. 22 (La.4/23/04), 874 So.2d 131, 148; *SWAT 24 Shreveport Bossier, Inc. v. Bond*, 2000-1695, p. 12 (La.6/29/01), 808 So.2d 294, 302. When a statute is clear and unambiguous and its application does not lead to absurd consequences, the statute is applied as written, and no further interpretation may be made in search of legislative intent. *See* La. Civ.Code. Ann. art. 9; La.Rev.Stat. 1:4. Courts are not free to rewrite laws to effect a purpose that is not otherwise expressed. *Cacamo v. Liberty Mut. Fire Ins. Co.*, 99-3479, p. 4 (La.6/30/00), 764 So.2d 41, 44; *White v. Wal-Mart Stores, Inc.*, 97-393, p. 4 (La.9/9/97), 699 So.2d 1081, 1084.

A plain reading of La.Rev.Stat. 47:2180 does not provide any penalty or remedy should the tax collector fail to perform his mandatory duty to provide the post-tax sale notice. We are not unmindful that the word "shall", for purposes of statutory construction, denotes a mandatory duty. La.Rev.Stat. 1:3, *Ray v. South Central Bell Tel. Co.*, 315 So.2d 759, 761 (La.1975). However, statutes classified as mandatory prescribe, in addition to requiring the doing of the thing specified, the result that will follow if they are not done. *Sanders v. Dep't of Health & Human Resources*, 388 So.2d 768, 770 (La.1980). Enacting La.Rev.Stat. 47:2180A(1)(b), the Legislature has prescribed a mandatory duty for the tax collector, but has not prescribed a result of nullity of the tax sale if the tax collector fails to give the post-tax sale notice. In a recent opinion we observed it is not the function of the judicial branch in a civilian legal system to legislate by inserting penalty provisions into statutes where the legislature has chosen not to do so. *Carter v. Duhe*, 05-CC-390, p. 10 (La.1/19/06), 921 So.2d 963. Although the language of La.Rev.Stat. 47:2180 does not provide that a tax sale shall be annulled if the tax collector fails to give the mandatory notice of delinquency and impending sale, the resulting nullity for failure to provide that notice is mandated by well established due process requirements.

Further support for our determination can be found in an earlier pronouncement from this Court. Act No. 88 of 1888 and Act No. 170 of 1898 prohibited notaries from passing acts of sale of real estate unless proof was attached in the form of a receipt or certificate from the tax collector as evidence of the payment of the taxes. Act No. 170 of 1898 further provided the imposition of a fine on the recorder or notary who violated the prohibition. Plaintiff

sought to annul two sales of property alleging, *inter alia*, that the notary failed, before passing the acts, to require proof of the payment of the taxes. Although this Court found that argument without merit, this Court noted "[i]f the lawmaker had intended, as an additional penalty, upon the parties thereto, that the sales should be stricken with nullity, he would, no doubt, have so written it in the law. As it is, the courts have no authority to supply it." *Putnam & Norman v. Cooper*, 127 La. 498, 53 So. 731 (1910).

CONCLUSION

In conclusion, we find the court of appeal erred in annulling the tax sale for the failure of the tax collector to provide the post-tax sale notice mandated by La.Rev.Stat. 47:2180A(1)(b). The Louisiana Constitution and the Due Process clauses of both the federal and state constitutions require notice be given to a property owner *before* his property is sold at a tax sale. It was undisputed that plaintiff herein received actual notice of the impending tax sale of his property. However, we decline to extend due process requirements to find that a post-tax sale notice is *further* required. Due process fundamentally requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner *before* the state deprives the person of property, which was done in this case.

DECREE

For the foregoing reasons, the judgment of the court of appeal is reversed and set aside. The district court judgment dismissing the suit, with prejudice, is reinstated.

REVERSED.

JOHNSON, J., dissents.

KNOLL, J., additionally concurs with reasons.

KNOLL, Justice, additionally concurs.

I write separately to note that my dissent in *Carter v. Duhe*, 05-CC-390, (La.1/19/05), 921 So.2d 963, is distinguishable from the holding in *Hamilton v. Royal Int'l Petroleum Corp.*, 05-C-846 (La.2/22/06) ___ So.2d ___. At issue in *Carter* was Louisiana's New Home Warranty Act ("NHWA"), specifically, two mandatory provisions of that act that came into conflict. In my view, the two conflicting provisions of the NHWA required a search for their meaning by examining the context in which they occurred and the text of the law as a whole. The case *sub judice*, however, does not concern the reconciliation of two mandatory provisions. Under both federal and state constitutional mandates, notice to a property owner of the potential loss of his property is a matter of due process. Therefore, failure of the tax collector to give the notice mandated by La.Rev.Stat. 47:2180A(1)(a) must result in the nullity of the tax sale, as this notice is constitutionally required. Unlike the two mandatory provisions at issue in *Carter*, *supra*, the two mandatory provisions of La.Rev.Stat. 47:2180, notice of impending sale to the delinquent taxpayer and post-tax sale notice, do not come into conflict. The Legislature prescribed a mandatory duty for the tax collector to give a post-tax sale notice, but the Legislature did not prescribe a result of nullity should the tax collector fail to give the post-tax sale notice. The courts have no authority to supply the penalty.

906 So.2d 627

Court of Appeal of Louisiana,
First Circuit.
Michael D. HAMILTON
v.
ROYAL INTERNATIONAL PETROLEUM CORPORATION and Elmer B. Litchfield, Sheriff & Tax Collector of the City of Baton Rouge.
No. 2003 CA 2660.

March 2, 2005.

Daniel J. McGlynn, Baton Rouge, Counsel for Plaintiff/Appellant Michael D. Hamilton.

Charles G. Blaize, Jr., Baton Rouge, Counsel for Defendant/Appellee Royal International Petroleum Company.

Leu Anne Lester Greco, Baton Rouge, Counsel for Defendant/Appellee Sheriff Elmer B. Litchfield.

Before: CARTER, C.J., WHIPPLE, PARRO, KUHN, GUIDRY, PETTIGREW, DOWNING, GAIDRY, McDONALD, McCLENDON, HUGHES, and WELCH, JJ.

GUIDRY, J.

The primary issue in this suit to annul a tax sale is whether the tax collector was required to give a tax debtor the post-sale notice provided in La. R.S. 47:2180A(1)(b), dealing primarily with the debtor's right of redemption, when the notice requirement was enacted after the sale, but before the expiration of the redemption period on the property. Concluding that notice was required under these circumstances, we reverse the judgment of the trial court refusing to annul the tax sale.

FACTS AND PROCEDURAL BACKGROUND

In 1994, plaintiff, Michael D. Hamilton, owned a residence in Baton Rouge, Louisiana, that he had inherited from his father and had lived in all his life.[1] A tax notice was sent to him for 1994 City/Parish taxes on the property, but the taxes were not paid. In April 1995, a notice of tax delinquency was sent to plaintiff, advising that the property would be seized and sold if the taxes were not paid within twenty days of the notice. Plaintiff signed a return receipt indicating receipt of the delinquency notice. After discussing the matter with someone at his mortgage company, plaintiff believed it was taken care of. However, the taxes remained unpaid, and the house was properly advertised for sale. On June 12, 1995, the property was sold at tax sale to defendant, Royal International Petroleum Corporation (Ripco) for $71.68, consisting of $27.09 in unpaid taxes, plus interest and costs. A tax deed on the property was executed in Ripco's name and recorded on June 30, 1995. Thereafter, Ripco paid all property taxes due on the property.

At some point in 1998, Irion Bordelon, as agent for Ripco, telephoned plaintiff and informed him that Ripco had purchased his property at tax sale. There was a dispute at trial as to when this conversation occurred and as to whether Bordelon advised plaintiff of his right to redeem the property. In any event, the property was not redeemed within the three-year period allowed by law,

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[1] The property was described in the tax notice as follows:

Lot 12 Sq. 7 Roseland Terrace, 40 Ft., N. side Cherokee St. x 120 Ft. Land, 1000 Imp. 1790. 1982 (P-40, 988), E. 10 Ft. Lot 13 Sq. 7 Roseland Terrace, 10 Ft. N. side Cherokee x 120 Ft. Land 250.

which expired on June 30, 1998. In January 1999, Ripco sent plaintiff an invoice offering to convey the property to him by quitclaim deed for the sum of $2555.24. The offer was not accepted. On October 15, 1999, plaintiff filed the instant suit to annul the tax sale, naming as defendants Ripco and Elmer B. Litchfield, Sheriff and Tax Collector for the City of Baton Rouge. Following trial, the trial court rendered judgment in favor of defendants, dismissing plaintiff's suit to annul the tax sale, with prejudice, at plaintiff's costs.

ASSIGNMENTS OF ERROR

1. The trial court erred in not finding that the tax sale to Ripco was null and void due to the tax collector's failure to give notice of the right of redemption to plaintiff as required by La. R.S. 47:2180A(1)(b).

2. Alternatively, the trial court erred in not finding that the tax sale and procedures relating thereto violated the Due Process clauses of the United States and Louisiana Constitutions.

3. Alternatively, the trial court erred in not finding that the tax sale and procedures relating thereto violated the Equal Protection clauses of the United States and Louisiana Constitutions.

DISCUSSION

La. Const. Art. VII, § 25(B)(1) provides that property sold at a tax sale is redeemable for three years after the date of recordation of the sale. On appeal, plaintiff argues the tax sale of his property should be annulled due to the tax collector's failure to give him written, post-sale notice

of this right of redemption as required by La. R.S. 47:2180A(1)(b). La. R.S. 47:2180 A provides as follows:

> (1)(a) On the second day of January each year, or as soon thereafter as possible, the tax collector shall address to each taxpayer who has not paid all the taxes, which have been assessed to him on immovable property, or to the record owner of the property for which the taxes are delinquent, or to the actual owner in the event the record owner is deceased, written or printed notice in the manner provided for herein that his taxes on immovable property must be paid within twenty days after the service or mailing of the notice, or that the property will be sold according to law.
>
> b) **On the second day of January of each year, or as soon thereafter as possible, in each year following the year in which the original notice of delinquency is made pursuant to Subparagraph (a) herein, the tax collector shall address to each taxpayer who has not paid all the taxes which have been assessed to him on immovable property a written notice in the manner provided herein. The notice shall specify the property upon which the taxes are delinquent, the amount of taxes due, and the manner in which the property may be redeemed. The notice shall be made each year until the property is no longer redeemable** as provided in Article VII, Section 25(B) of the Constitution of Louisiana. . . . (Emphasis added).

Subparagraph A(1)(b) was not part of La. R.S. 47:2180 at the time of the 1995 tax sale at issue herein, but was added by Acts 1997, No. 984. This provision imposes a mandatory duty upon the tax collector to provide a tax

debtor with written, post-sale notice of the amount of taxes due and the manner in which his property may be redeemed. This notice is to be given in January of each year following the original notice of delinquency until the property is no longer redeemable. Prior to the 1997 amendment, the tax collector had no such statutory duty.

Act 984 did not provide a specific effective date or express any intent regarding either retroactive or prospective application of La. R.S. 47:2180A(1)(b). Thus, it became effective on August 15, 1997, the general effective date for acts of the 1997 Regular Session. Accordingly, plaintiff contends he was entitled to the notice provided by La. R.S. 47:2180A(1)(b) in 1998, even though the tax sale occurred in 1995, since the three-year redemption period for his property had not yet expired. In opposition, defendants argue La. R.S. 47:2180A(1)(b) cannot be applied to tax sales that occurred prior to its enactment. They contend that doing so would be a retroactive application of the amended statute that would deprive Ripco of property rights that vested at the time of the 1995 tax sale. We disagree, concluding that application of La. R.S. 47:2180A(1)(b) to the facts of the present case constitutes a prospective, rather than retroactive, application of the provision.

In *Walls v. American Optical Corporation,* 98-0455, p. 4 (La.9/8/99), 740 So.2d 1262, 1266, the Louisiana Supreme Court recognized the difficulty of determining whether a statute is operating retroactively when it is applied in a situation where some of the operative facts occurred before its enactment, while others occurred after its effective date. The United States Supreme Court discussed this issue in *Landgraf v. USI Film Products,* 511

U.S. 244, 114 S.Ct. 1483, 128 L.Ed.2d 229 (1994), stating as follows:

> A statute does not operate "retrospectively"[2] merely because it is applied in a case arising from conduct antedating the statute's enactment, or upsets expectations based in prior law. Rather, the court must ask whether the new provision attaches new legal consequences to events completed before its enactment. (Citations omitted). 511 U.S. at 269-70, 114 S.Ct. at 1499, 128 L.Ed.2d at 254. (Footnote added).

The Louisiana Supreme Court further explained that a law is not considered as operating retroactively unless it either: (1) evaluates the conditions of the legality of a past act, or (2) modifies or suppresses the effects of a right already acquired. *Smith v. Board of Trustees of Louisiana State Employees' Retirement System,* 02-2161, p. 8 (La.6/27/03), 851 So.2d 1100, 1106, *cert. denied,* 540 U.S. 1179, 124 S.Ct. 1414, 158 L.Ed.2d 81 (2004); *Walls,* 98-0455 at pp. 5-6, 740 So.2d at 1267.

Neither of these situations is applicable in the instant case. First, in making a determination of whether there has been compliance with La. R.S. 47:2180A(1)(b), the focus is not on the legality or manner in which the 1995 tax sale was conducted. Irrespective of whether the 1995 sale was properly conducted, the issue is whether there was adherence to the requirement that plaintiff be given the notice delineated in La. R.S. 47:2180A(1)(b), which by its very terms is to be given after a tax sale. Thus, any

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[2] The Supreme Court specifically noted that the terms "retroactive" and "'retrospective" are synonymous in judicial usage. *Landgraf,* 511 U.S. at 269, 114 S.Ct. at 1499.

deficiency in the proceedings that occurred in 1998 as a result of the tax collector's failure to give the post-sale notice occurred after the effective date of this provision. The fact that a subsequent defect could ultimately result in annulment of the 1995 tax sale does not alter this crucial fact. Even when the operation of a statutory provision is unquestionably prospective, it may still "unsettle expectations and impose burdens on past conduct. . . ." *Landgraf,* 511 U.S. at 270 n. 24, 114 S.Ct. at 1499 n. 24.

Moreover, we do not believe the application of La. R.S. 47:2180A(1)(b) in the instant case operates to disturb, modify or suppress any acquired or vested rights of Ripco. The tax deed obtained by Ripco in 1995 conferred only a conditional or contingent title upon Ripco during the redemptive period, as opposed to a vested right. A "vested right" is one that is "absolute, complete and unconditional, independent of a contingency, and a mere expectancy of future benefit . . . does not constitute a vested right." *Smith,* 02-2161 at p. 9, 851 So.2d at 1106. It is well established that the title acquired by a purchaser at a tax sale is an inchoate or contingent one during the period of redemption, since it is defeated by the exercise of that right. *Kelso v. Caffery,* 221 La. 1, 58 So.2d 402, 406 (1952); *Mississippi Land Company v. S & A Properties II, Inc.,* 01-1623, pp. 3-4 (La.App. 3rd Cir.5/8/02), 817 So.2d 1200, 1203; *Wells v. Joseph,* 95 So.2d 843, 845-46 (La.App. 2nd Cir.1957), *affirmed,* 234 La. 780, 101 So.2d 667 (1958). Upon purchasing plaintiff's property, Ripco undoubtedly had an expectation that its conditional title might ripen into a perfect title upon expiration of the redemptive period, if the property were not redeemed. Nevertheless, since the law was changed during the redemptive period,

while Ripco's rights were still inchoate, no vested or acquired rights were affected or impaired by the change.[3]

Under its plenary powers, the Legislature was free to add a new prerequisite to the proceedings leading to the final divesture of a tax debtor's property. The Legislature chose to do so by enacting La. R.S. 47:2180A(1)(b), which mandates that tax debtors be given post-sale notice of their right of redemption each year until their property is no longer redeemable. This notice provision became effective in the interim between the 1995 tax sale of plaintiff's property and the expiration of the redemptive period thereon. As we have noted, we believe its application in the instant case is prospective, rather than retroactive. Accordingly, plaintiff was entitled to post-sale notice in January 1998, since the redemptive period on his property had not yet expired at that time.

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[3] A somewhat analogous situation occurred in *Smith*, 02-2161 at pp. 8-12, 851 So.2d at 1106-1110, which involved numerous employees who retired from and were then rehired by the Louisiana Department of Public Safety and Corrections under a law that allowed a retiree to receive both his salary and full retirement benefits, as well as other benefits, if he was retired for at least twelve months before being rehired. If a retiree was rehired sooner than twelve months, his retirement benefits were suspended until that period had expired, i.e., the waiting period. However, prior to any of the retirees completing the waiting period, the Legislature changed the law to require the retirees to select one of four options, none of which afforded them all of the benefits offered at the time they were rehired. The retirees filed a suit for declaratory judgment arguing the new law was unconstitutional because it retroactively deprived them of the reemployment benefits in effect at the time they retired and were rehired. The Louisiana Supreme Court rejected this argument, holding that because the reemployment benefits were modified prior to the expiration of the twelve-month waiting period, the law did not operate retroactively, and affected only inchoate, rather than vested, rights of the retirees.

Furthermore, we agree with plaintiff's contention that the tax collector's failure to give him the notice required by La. R.S. 47:2180A(1)(b) entitled him to annulment of the tax sale to Ripco. Under the terms of this provision, the duty of the tax collector to give post-sale notice each year until the property is no longer redeemable is mandatory. The apparent purpose of this notice requirement is to ensure that tax debtors are aware of their right to redeem their property, as well as to facilitate the exercise of that right, if a tax debtor so chooses. The tax collector's failure to perform its mandatory duty resulted in a fatal defect in the proceedings, since it deprived plaintiff of a valuable safeguard granted by the Legislature.

This conclusion is supported by the holding of *United Financial Group, Inc. v. Davis,* 481 So.2d 726 (La.App. 1st Cir.1985), which dealt with a tax collector's failure to give a required post-adjudication notice to two tax debtors whose property was adjudicated to the state for unpaid taxes. When property is adjudicated to the state, La. R.S. 47:2186 imposes a mandatory duty on the tax collector to immediately, or as soon as possible thereafter, notify the tax debtor in writing that the sheriff will take actual possession of the adjudicated property within thirty days. The required post-adjudication notice was never given. The property was subsequently offered at sheriff's sale and purchased by United Financial Group. When United filed suit to confirm title, the tax debtors responded by filing a petition to annul the tax adjudication to the state, based on the tax collector's failure to provide the post-adjudication notice mandated by La. R.S. 47:2186. The trial court rendered judgment in favor of the tax debtors. This Court affirmed, concluding the tax collector's failure to provide the required notice rendered the adjudication to

the state a nullity. *United,* 481 So.2d at 728. In reaching this conclusion, the *United* court relied on the fact that the notice requirement was mandatory, stating that the Constitution tolerated "nothing less than strict compliance with the procedures involved in divesting someone of his property." *United,* 481 So.2d at 729. We believe this reasoning is likewise applicable herein, even though the post-adjudication notice at issue in *United* differed from the post-sale notice required by La. R.S. 47:2180A(1)(B). This fact does not alter the fundamental premise of *United* that the failure to comply with a mandatory notice requirement is a fatal defect in the proceedings. In proceedings leading to the final divesture of a tax debtor's property, there must be strict adherence to the notice provisions mandated by law. *United,* 481 So.2d at 729; *see also* La. Atty. Gen. Op. No. 91-663 (1992) (failure to give post-adjudication notice, which is just as important as pre-sale notice of delinquency, renders the adjudication null and void).

In brief, Ripco argues *United* cannot serve as authority for annulling the tax sale in this case, because it is distinguishable in several respects. The primary distinction alleged is that the *United* holding was based on the fact that the tax debtors in that case, unlike the plaintiff herein, never received notice of delinquency and, therefore, were unaware of their delinquency status. However, contrary to Ripco's assertions, notice of delinquency was not an issue in that case, all parties having agreed that the required pre-sale notices were given. *United,* 481 So.2d at 727 n. 1. The holding of *United* was specifically based on the lack of post-adjudication notice, rather than pre-sale notice of delinquency, as alleged by Ripco. In further attempting to distinguish *United,* Ripco emphasizes it

involved an adjudication to the state rather than a tax sale to a private investor. However, neither this fact nor any of the other distinctions advanced by Ripco alters our conclusion that the fundamental reasoning of *United,* that there must be strict compliance with all formalities leading to the final divesture of a tax debtor's property, is equally applicable to the instant case.

Finally, Ripco contends the tax collector's failure to give plaintiff notice pursuant to La. R.S. 47:2180A(1)(b) is not grounds for annulment in view of the fact that plaintiff was given actual notice of his right to redemption by Ripco's agent, Irion Bordelon. Although Ripco contends this fact is undisputed, the record does not support its claim. To the contrary, it indicates both the date of Bordelon's initial contact with plaintiff and the substance of their conversation were disputed at trial. Plaintiff insisted the initial conversation occurred after the expiration of the redemptive period in June 1998, whereas Bordelon stated it took place in January 1998. Furthermore, while plaintiff admitted Bordelon told him about the tax sale, he denied knowing he had a right to redeem his property. According to plaintiff, Bordelon merely told him he could buy his property back from Ripco for $2,500, which plaintiff could not afford to do. Plaintiff claims this sum exceeded by $1000 what the actual cost of redemption would have been at that point.

In opposition to plaintiff's testimony, Bordelon initially testified that he informed plaintiff he could redeem his property by going to the sheriff's office. Under cross-examination, however, Bordelon admitted he could not specifically remember telling plaintiff that he could redeem the property through the sheriff's office, but was basing his testimony on notes he made of the conversation.

Moreover, he conceded these notes did not specifically mention anything about telling plaintiff about his right to redemption. Bordelon explained his earlier testimony by saying he may have just "assumed" plaintiff would go to the sheriff's office to inquire about his property upon being told his house had been sold for taxes.

Under the circumstances, we cannot agree that the record establishes plaintiff received post-sale notice from Bordelon adequate to meet the requirements of La. R.S. 47:2180A(1)(b), even assuming for the sake of argument that verbal notice from a tax purchaser can satisfy the tax collector's duty to give written notice.[4] While it is clear that Bordelon informed plaintiff that his property had been sold at tax sale, La. R.S. 47:2180A(1)(b) requires more than mere notice that a tax sale has occurred. It also requires that a tax debtor be notified of the amount of taxes due on his property and the manner in which the property can be redeemed. Bordelon did not even claim to have told plaintiff the amount of taxes he owed. Moreover, considering the entirety of the testimony, the record does not adequately reflect that plaintiff was given notice of his right of redemption in this case.[5]

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[4] We note that La. R.S. 47:2180 B requires the written notice to be sent by certified mail, with return receipt requested, except that in cities with populations over 50,000, the tax collector also has the option of making personal or domiciliary service on the tax debtor. Further, after completing the mailing or service of notice, the tax collector is required to prepare an official proces verbal stating how notice was given to each tax delinquent. These requirements indicate the importance the Legislature places on the notices that must be given to tax debtors.

[5] In view of our conclusion that the tax sale must be annulled due to lack of post-sale notice, we pretermit consideration of the remaining assignments of error asserted by plaintiff.

CONCLUSION

For the reasons assigned, we find there should be judgment in favor of plaintiff annulling the tax sale at issue herein.[6] Accordingly, we reverse the judgment of the trial court dismissing plaintiff's suit, and hereby render judgment in favor of plaintiff and against defendants, decreeing that the tax sale made to Royal International Petroleum Corporation on June 12, 1995, by the Sheriff and Tax Collector for the Parish of East Baton Rouge, and recorded on June 30, 1995, covering the property described as: Lot 12 Sq. 7 Roseland Terrace, 40 Ft., N. side Cherokee St. x 120 Ft. Land, 1000 Imp. 1790. 1982 (P-40, 988), E. 10 Ft. Lot 13 Sq. 7 Roseland Terrace, 10 Ft. N. side Cherokee x 120 Ft. Land 250, is hereby annulled and ordered cancelled from the records in the Office of the Clerk and Recorder for the Parish of East Baton Rouge, said annulment to be effective upon payment by plaintiff to defendant, Royal International Petroleum Corporation, of the amount due under La. Const. Art. VII, § 25(C), consisting of the purchase price, all taxes and costs, and ten percent (10%) per annum interest on the amount of the price and taxes paid from the date of respective payments, or in the event of refusal of said defendant to accept this amount, upon the deposit by plaintiff of the amount due and owed to said defendant in the Registry of the Nineteenth Judicial District Court for the Parish of East Baton Rouge. The

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[6] At oral arguments, counsel for defendant, Sheriff Elmer Litchfield, requested that, in the event we conclude the tax sale must be nullified, we declare the nullity to be relative in nature rather than absolute. However, we decline to consider this issue, because such a determination is not necessary to the ultimate resolution of this matter and would merely constitute non-binding dicta. *Cf. State v. Brooks*, 99-1441, p. 1 (La.11/24/99), 765 So.2d 993.

costs of this appeal, in the amount of $891.59, are to be shared equally by defendants.

REVERSED AND RENDERED.

PETTIGREW, J., dissents for the reasons assigned by Judge GAIDRY.

GAIDRY, J., dissents and assigns reasons.

CARTER and McDONALD, JJ., concur.

PARRO and KUHN, JJ., dissent.

GAIDRY, J., dissenting.

I must respectfully disagree with the majority's retroactive application of the 1997 amendment creating La. R.S. 47:2180(A)(1)(b). In the first place, I disagree with the majority's conclusion that Ripco did not acquire a vested property right through the tax sale at issue; regardless of the inchoate or incomplete nature of the property "title," the property right acquired by Ripco is clearly a "significant property interest" of which it may not be divested without due process. *See Fuentes v. Shevin,* 407 U.S. 67, 86, 92 S.Ct. 1983, 1997, 32 L.Ed.2d 556 (1972). Secondly, I disagree that this court's holding in *United Financial Group, Inc. v. Davis,* 481 So.2d 726 (La.App. 1st Cir.1985), is fairly comparable or analogous to the result reached herein. Lastly, from a practical standpoint, the majority's holding will create unnecessary confusion in property title examinations and unwarranted administrative burdens on the tax collectors of this state. That the notice requirements of the applicable statute were no

doubt improved by the 1997 amendment does not mean they were defective before its effective date.

Certainly, the relatively insubstantial monetary amount of unpaid taxes and Mr. Hamilton's lifelong residency in his family home make this a harsh case from an equitable standpoint. But those circumstances are irrelevant since the existence of positive law precludes equity as the determining criterion here; good intentions often make for bad law. I am fully in sympathy with Mr. Hamilton's plight, but there is no question that he received the notice due under the prevailing statute, that he was not deprived of due process, and that the result reached by the trial court was fully supported by the facts and in accord with the law which governs this dispute. Under these circumstances, the judgment should be affirmed. I respectfully dissent.

[SEAL]

Supreme Court
STATE OF LOUISIANA
New Orleans

[Names And Addresses Omitted In Printing]

May 12, 2006

Charles Gary Blaize, Jr., Esq.
P.O. Box 3197
One American Place 23rd Floor
Baton Rouge, LA 70821-3197

Daniel J. McGlynn, Esq.
340 Florida Street
Baton Rouge, LA 70801

Leu Ann Greco, Esq.
522 Europe Street
Baton Rouge, LA 70802

Re: Hamilton v. Royal International Petroleum Corp. et al.
05-C-0846

Dear Counsel:

After its initial consideration of the rehearing application in the referenced matter, the Court has concluded that additional briefing is appropriate. Therefore, I have been instructed to request that supplemental briefing on the adequacy of the pre-sale notice be filed by applicant within 10 days of the date of this letter and that respondent's brief be filed 5 days thereafter.

Your prompt attention to this matter is appreciated. Should you have any questions, you may contact me directly.

Sincerely,

/s/ Janet D. Dilzell
Janet D. Dilzell
Administrative Counsel

MICHAEL D. HAMILTON v. ROYAL INTERNATIONAL PETROLEUM CORPORATION AND ELMER B. LITCHFIELD, SHERIFF & TAX COLLECTOR OF THE CITY OF BATON ROUGE

2005-C-0846

SUPREME COURT OF LOUISIANA

2005-0846 (La. 6/30/06);

2006 La. LEXIS 2130

June 30, 2006, Decided

PRIOR HISTORY: Parish of E. Baton Rouge. *Hamilton v. Royal Int'l Petroleum Corp.*, 2006 La. LEXIS 644 (La., Feb. 22, 2006).

JUDGES: CALOGERO, C.J., would grant a rehearing, KIMBALL, J., would grant a rehearing, JOHNSON, J., would grant a rehearing.

OPINION:

REHEARING DENIED.

Supreme Court, U.S.
FILED
NOV 2 9 2006
OFFICE OF THE CLERK

No. 06-455

IN THE

Supreme Court of the United States

MICHAEL D. HAMILTON,

Petitioner,

v.

ROYAL INTERNATIONAL PETROLEUM CORPORATION and ELMER B. LITCHFIELD, SHERIFF and TAX COLLECTOR,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

BRIEF IN OPPOSITION

CHARLES G. BLAIZE, JR.
MAYHALL & BLAIZE, L.L.C.
5800 One Perkins Place Drive
Suite 2-A
Baton Rouge, Louisiana 70808
(225) 810-4998

Counsel for Respondent

204973

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

COUNTER STATEMENT OF THE QUESTION PRESENTED

The Petitioner presents no constitutional question to the Court in its Writ Application. The State action of taking was complete at the tax sale. The tolling of the right of redemption is not a taking, as such right involves no State action. The failure to exercise such right by a tax debtor does not constitute a taking by the State, and as such, the failure to send notice thereof to the tax debtor, although required by statute, has no constitutional implications under ***Mennonite*** or the Fourteenth Amendment of the United States Constitution.

The Louisiana Constitution provides a right to redeem property sold for delinquent taxes; however, such right of redemption exists between two private parties where property is sold at a tax sale to a third party purchaser. The right of redemption does not exist until the property is actually sold by the Sheriff. The Due Process Clause of the Fourteenth Amendment requires the government to provide an owner (tax debtor) with notice and an opportunity to present his objections to the taking before the State could seize and sell such property for delinquent taxes.

The Petitioner received notice of the pending seizure and sale prior to the 1995 Tax Sale and the constitutionality of the statutes which govern said Tax Sale were not challenged by the Petitioner. As such, the statutory duty of the Sheriff to give notice of a right to redeem has no constitutional implications under ***Mennonite*** or the United States Fourteenth Amendment of the Constitution (Due Process Clause) where the right of redemption did not exist prior to the completion of the State action of taking.

STATEMENT PURSUANT TO RULE 29.6

Respondent, Royal International Petroleum Corporation, has no parent corporation and no publicly held company owns 10% or more of its stock.

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BRIEF IN OPPOSITION

Summary of Reasons to Deny the Petition

In its decision, the Louisiana Supreme Court concluded that the Petitioner received actual notice of the impending tax sale of his property and does not have a constitutional due process claim. The Louisiana Supreme Court held:

> **"It was undisputed the tax collector was in strict compliance in notifying [Petitioner] of his property taxes and the pending sale if the delinquent taxes were not paid" and "... fundamental due process is not required to inform [Petitioner] ... that he may redeem his property for a period of less than one year."** 934 So. 2d 32 [emphasis added]

The existing right of redemption was created between two parties after the culmination of the State action and taking. The failure of the State, acting through the Sheriff, to comply with its statutorily imposed duty to provide notice of a right to redeem, where the legislature has imposed no penalty for the State's failure to comply therewith, does not present a constitutional issue. Thus, the Court should deny Petitioner's Petition because the case does not qualify for review in this Court.

The conclusion of the Louisiana Supreme Court does not fundamentally differ from this Court's holding in ***Logan v. Zimmermann Brush Company***, 455 U.S. 422 (1982) and/or with this Court's holding in ***Jones v. Flowers***, 547 U.S. __, 126 S. Ct. 1708 (2006), as neither case involved property rights existing between private party ownership claims. This Court has held that prior to an action [taking by the State] which will affect an interest in property protected by the Due Process Clause of the Fourteenth Amendment, a

State must provide notice reasonably calculated, under all circumstance, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections. ***Mullane v. Central Hanover Bank and Trust Co.,*** 339 U.S. 306, 313 (1950); ***Mennonite Board of Missions v. Adams,*** 462 U.S. 791, 801 (1983).

The record is clear that Petitioner received the statutory and constitutional notice prior to the date of the tax sale. Unlike any case cited in the Writ Application by Petitioner, Louisiana law transfers ownership of the property on the date of the tax sale. The subsequent right of redemption granted to a former tax debtor is a right existing between the tax debtor and the tax sale purchaser. Regardless of the exercise of the right of redemption by the former owner, amendment to the statute mandating notice by the Sheriff could not and did not change the rights existing between the parties hereto (tax sale purchaser/debtor), and as such, Petitioner presents no constitutional issue upon which this Court could grant relief. Therefore, this Court should deny said Petition because the case does not qualify for or otherwise merit review in this Court.

STATEMENT OF THE CASE

A. Factual Background

In December of 1994, Michael Hamilton, the Petitioner in the underlying suit, received a standard property tax notice from the East Baton Rouge Parish Tax Collector's office informing him that ad valorem taxes on his home were due and unpaid. The written notice of tax delinquency in 1995 (which was sent via certified mail and received by Petitioner) specifically stated that the taxes on the subject property were required to be paid within 20 days after the mailing or service of said notice, or **else the property would be sold according**

to law. However, despite receiving notice regarding his delinquent taxes, the Petitioner failed to pay the taxes due.

Because the ad valorem taxes due on the Petitioner's immovable property remained unpaid and delinquent, a tax sale was held on June 12, 1995. Royal International Petroleum Corporation (hereinafter referred to as "RIPCO") purchased the subject property at the 1995 Tax Sale. Said sale was recorded in the Conveyance Records of East Baton Rouge Parish, State of Louisiana, on June 30, 1995, in Bundle 10606, Original 362. Thus, on the date of the tax sale RIPCO became the full owner of the property, subject to a three-year right of redemption in favor of the Petitioner, which right of redemption was also created at the time of the tax sale.

The amount paid at the original Tax Sale was $71.68 (consisting of $27.09 in unpaid taxes, plus Sheriff's costs and statutory penalties). Petitioner, in an effort to appeal to the equitable fairness and emotions of the Court, has continuously made reference to the small amount of money owed in taxes which caused the Sheriff to sell his immovable property. However, the amount paid at the tax sale is an irrelevant factor to determining the legal consequences of a tax sale. Of importance is the fact that Petitioner received all of the necessary statutory and constitutional notice of his delinquency of the taxes due **prior** to the 1995 Tax Sale (Record. 33). It was not disputed by the Petitioner at trial that the Notice of Delinquency of Taxes satisfied all statutory requirements as set forth in La. R.S. 47:2180 *et seq.* (as it existed in 1995). Petitioner states in his Writ Application to the Court that he did not believe from the Sheriff's delinquency notice that his home would be sold for

delinquent taxes; however, such statement is patently false as evidenced by the Record.[1]

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1. Furthermore, the Petitioner, while under direct examination stated:

MR. MCGLYNN: Now, I understand that this is not actually the notice that was sent to you but that this is simply an exemplary notice. Would you read the words that — advising what you are instructed about?

MR. HAMILTON: If not paid within twenty days from the date of this notice, I shall seize, advertise and sell sufficient property to pay said taxes together with all the interest, penalties and costs.

MR MCGLYNN: Assuming that you did in fact receive this, did this in any way apprise you that your house was going to be seized and sold?

(Objection and Argument)

MR. MCGLYNN: Did you understand that this language could possibly mean that your house would be seized and sold?

MR. HAMILTON: *Yes.*

MR. MCGLYNN: You understood that is what this language meant, that your house would be seized and sold?

MR. HAMILTON: They were going - my house was going to be sold, or something was going to happen there.

(Record. 86-88). Thus, the Trial Court found that Petitioner was well aware of the fact that his house would be sold at tax sale in light of his failure to pay the delinquent taxes due in 1995. (Oral Reasons for Judgment)

Even after the Petitioner's right to redeem prescribed, RIPCO offered Petitioner the opportunity to reacquire the property via Quitclaim Deed for the sum of $2,555.24, which amount included the taxes paid on the subject property from the date of the tax sale, the statutory interest (calculated as if Petitioner were redeeming the property at 1% per month), plus RIPCO's expenses of obtaining an abstract and attorney fees for examining such abstracts and preparation of the Quitclaim Deed. Petitioner did not accept the offer and instead elected to institute the present suit.

At the time of the tax sale in 1995, La. R.S. 47:2180 did not require any subsequent notice of a right to redeem. The statute was amended requiring such subsequent notice in August of 1997. Irion Bordelon, an agent for RIPCO, did offer Petitioner the right to redeem said property both before and after the legal redemptive period had run (TR. 61). The Petitioner, however, did not redeem the property within the three-year period of time, and as such, any right to redeem prescribed in favor of RIPCO, the sole owner of all right, title and interest in and to said property.

B. Procedural Background

After the three (3) year period to redeem the property from RIPCO had expired, Petitioner instituted Suit to Annul the 1995 Tax Sale. The parties hereto, alleging no factual dispute, filed three (3) Motions for Summary Judgment, all which were denied by the Trial Court. A trial on the merits followed, at which the sole issue presented to the Court by the Petitioner was an allegation that Petitioner did not receive adequate notice of his right to redeem as a result of the

Sheriff's alleged failure to follow the provisions of La. R.S. 47:2180(A)(1)(b) as revised in 1997.[2] The Trial

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2. During trial on this matter, Petitioner explicitly stated at the trial that he was not contesting the constitutionality of the pre-tax sale notice statutory scheme. At the trial of this matter, counsel for RIPCO objected to the raising of such a constitutional challenge, to– wit:

MR. BLAIZE: Your honor, my lack of foundation argument – excuse me, objection is based on the fact that they have not put forth any evidence saying that they notified the attorney general, as required by statute, in order to put forth a constitutional claim under 1344:48 [sic], and, therefore they don't – until they put it forward, they have not laid a foundation for the question, as to the constitutionality of the statutes.

THE COURT: They're not challenging the constitutionality of the statute, as I understand it, or at least the value is not going to the constitutionality of the statute, its merely to the due process argument under the federal constitution for a taking of value, which is what I understood it to be. Is that correct, Mr. McGlynn.

MR MCGLYNN: That would be correct.

(R. 84-85).

MR. BLAIZE: Objection, your Honor. I reissue the lack of foundation argument. Now he is definitely trying to assert the unconstitutionality of the statute dealing with the Tax Sale, R.S. 2180, I believe is what he's doing.

MR MCGLYNN: This doesn't go to the constitutionality of the statute so much as it does the ineffectiveness of their attempts to comply with it.

(R. 87).

Court did not discuss the constitutionality of the pre-sale tax notice statutes as same was not properly pled under La. R.S. 13:4448. La. R.S. 13:4448 requires a party to give notice by certified mail to the Attorney General prior to challenging the constitutionality of a statute, thus granting the State an opportunity to participate in such proceeding. No such notice was mailed to the Attorney General, and as such, any constitutional challenge to the statute was not properly pled. Judgment was rendered in favor of RIPCO, for oral reasons assigned, dismissing Petitioner's suit with prejudice.

Since the statutes effectuating notice prior to the tax sale were properly followed, the constitutional challenge presented by Petitioner herein must be that the statutes themselves are unconstitutional. Page 6 of Petitioner's Brief, states that he specifically alleged that the Sheriff, in violation of the Due Process Clause of the Fourteenth Amendment, had not afforded him adequate notice of the threatened loss of his house, of the date, time, and place of the tax sale, and of the manner of redemption. The Louisiana tax sale statutes do not require that the notice contain the date, time and place of sale, but does include the address where a delinquent tax payer could pay such taxes and obviate the impending sale.

The First Circuit Court of Appeal of Louisiana reversed the Trial Court's decision, for reasons assigned, declared the sale was invalid and remanded the case to the District Court for payment of constitutional taxes and interest due (609 So. 2d 630). A dissenting opinion was also issued, stating that the Judgment rendered by the Trial Court was fully supported by the facts and in accord with the law that governs this dispute and that same should be affirmed (609 So. 2d 627, 2003-2660 (La. App. 1 Cir. 3/2/05).

The Louisiana Supreme Court reversed the First Circuit stating:

> "It was undisputed the tax collector was in strict compliance in notifying [Petitioner] of his property taxes and the pending sale if the delinquent taxes were not paid" and ". . . fundamental due process is **not** required to inform [Petitioner] . . . that he may redeem his property for a period of less than one year." 934 So. 2d. 32 [emphasis added]

REASONS FOR DENYING THE PETITION

I. The Petition for a Writ of Certiorari presents no constitutional issue to this Court.

People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property, but before forcing a citizen to satisfy his debt by forfeiting his property, due process requires that the government provide notice of the impending taking. U.S. Constitution Amendment 14; ***Mennonite Bd. of Missions v. Adams***, 462 U.S. 791, 799, (1983). Therefore, under ***Mennonite***, as Petitioner received, by certified mail, a notice which stated that Petitioner could obviate the taking (tax sale) by payment of taxes within twenty (20) days of receipt of such notice, his due process rights were properly afforded to him. Without directly challenging the constitutionality of the requirements set forth in the statutes regarding notice, Petitioner has stated no constitutional challenge regarding the sufficiency of the pre-sale notice.

Petitioner argues that the Louisiana Supreme Court decision resulted in a failure to protect his right of redemption thus violating his due process rights. The right of redemption

is generally viewed as a vested property right, of which the owner of such right could not be legally deprived by government action without the giving of notice; however, such deprivation is limited in the cases cited by Petitioner to factual scenarios whereby the State is taking the redemptive right. The Petitioner cites no case contradictory to the decision of the Louisiana Supreme Court decision in this case. The redemptive right herein is conferred by the Louisiana Constitution and perfected **after** the date and time of the taking and/or **after** the State action is completed.

The decision of the Louisiana Supreme Court at issue herein is not in conflict with this Court's due process holding in ***Logan v. Zimmermann Brush Company***, 455 U.S. 422, 432 (1982). The ***Logan*** court held that the Due Process Clause of the United States Constitution contains a two part inquiry: Whether a party was deprived of a protected interest, and if so what process was his due? According to ***Mennonite*** and ***Jones***, citing ***Mullane v. Central Hanover Bank and Trust Co.,*** 339 U.S. 306, 313 (1950), "before a State may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner notice and opportunity for hearing appropriate to the nature of the case." The decision of the Louisiana Supreme Court at issue herein upheld the Trial Court's findings that the Petitioner received notice of the pendency of a tax sale as a result of his delinquency and failed to pay his property taxes. Petitioner was not deprived of his constitutional right to obviate the tax sale by making payment thereof.

The second part of the test in ***Logan*** is what notice is due from the State before the taking of a property interest without first giving the putative owner an opportunity to present his claim of entitlement. Citing ***Parratt v. Taylor***,

451 U.S. 527 (1981) the ***Logan*** court emphasized that it was dealing with "a tortuous loss of . . . property as a result of a random and unauthorized act by a State employee . . . not a result of some established State procedure" 441 U.S. 541. Unlike the ***Logan*** case, wherein a State statute destroyed a complainant's property interest by operation of the law where a State action was required or else the property owner's interest is lost, the Louisiana tax sale regulatory scheme creates the right of redemption in favor of the tax debtor. If the tax debtor fails to exercise his right to redeem within three (3) years of the tax sale, that right terminates. This termination of the right to redeem is not the result of any State action. Rather, it is solely the result of the limited nature of the right and the debtor's own inaction.[3] Unlike the facts presented in ***Logan,*** the facts herein evidence no State action affecting the right of the Petitioner to redeem. The amendment to the tax sale statutes in 1997 simply mandated a notice by the Sheriff; however, such notice, as properly held by the Louisiana Supreme Court, has no due process implications. The failure to provide such notice is not a failure to provide a tax debtor with notice of any pending State taking.

II. A statute does not create a constitutional due process right, such rights are limited to the State action of taking.

The Due Process Clause of the Fourteenth Amendment provides that "no state shall . . . deprive any person of . . . property, without due process of law". Petitioner contends that he "was denied due process of law by the Sheriff's failure to afford him notice of the manner of redemption" as required

3. Prescription, as used in the civilian tradition is similar to the common law term "tolling".

by La. R.S. 47:2180(A)(1)(b) as amended in 1997. The Petitioner is not claiming that the State denied him protection without granting him appropriate procedural safeguards (i.e. notice of the impending tax sale), but rather that the amended statute categorically obligated the State to protect him by giving him notice of his right to redeem.

In ***Deshaney v. Winnebago County Department of Social Services, et al.,*** 489 U.S. 189, 195, the Court stated that nothing in the language in the Due Process Clause itself requires the State to protect the property of its citizens against invasions by private actors. The Due Process Clause is

> "phrased as a limitation on the **State's power to act,** not as a guarantee of certain minimal levels of safety and security. It forbids the State itself to deprive individuals of . . . life, liberty or property without "due process of law," but its language cannot fairly be extended to impose an affirmative obligation on the State to insure that those interests do not come to harm through other means. Nor does history support such an expansive reading of the constitutional text."

Deshaney v. Winnebago County Department of Social Services, et al., 489 U.S. 189, 195. As in the ***Deshaney*** case, Petitioner argues that the statute mandating the Sheriff's notice of a right to redeem created a "special relationship" because the State knew that Petitioner's right of redemption would prescribe, thus creating an affirmative duty of the State enforceable through the Due Process Clause. Its failure to discharge that duty, as argued by Petitioner, is an abuse of government power that creates a new wrinkle, as to constitute a substantive due process violation. Such an argument was soundly rejected by this Court in ***Deshaney***. According to

the substantive due process analysis in ***Deshaney***, it is the State's affirmative act of taking of property which is the deprivation of property triggered by the protections of the Due Process Clause, not its failure to act to protect Petitioner's property interest against the tolling of prescription in favor of third parties.

The Due Process Clause of the Fourteenth Amendment is intended to secure an individual from the arbitrary exercise of the powers of government and to prevent governmental power from being used for purposes of oppression and to prevent the affirmative abuse of power. ***Paratt v. Taylor***, 451 U.S. 527, 549 (1981). The purpose of the Due Process Clause is to protect the people from the State, not to insure that the State protects rights flowing between two (2) citizens. The Framers of the Constitution were content to leave the extent of government obligation in the latter area to the democratic political process. ***Deshaney*** at 196.

III. Under Louisiana law, unlike most common law states, ownership transfers at the completion of the tax sale.

Under Louisiana property law, full and perfect ownership changes on the date of the tax sale. As such, RIPCO became the owner of the property at issue herein on June 30, 1995. All the cases cited by the Petitioner evidencing a violation of the Due Process Clause of the United States Constitution under various other State statutory schemes, fails to recognize the Louisiana civilian property right laws.

The Louisiana Civil Code contains several articles which set forth the civilian concepts of ownership as a bundle of rights in a thing. La. C.C. art. 476 states that one may have various rights in things: (1) ownership; (2) personal and

predial servitudes; and (3) such other real rights as the law allows. La. C.C. art. 477 defines ownership as the **right** that confers on a person direct, immediate and exclusive authority over a thing. The owner of a thing may use, enjoy and dispose of it within the limits and under the conditions established by law. Even though ownership is defined as the exclusive authority over a thing, the code recognizes that the right of ownership may be subject to dismemberment, thereby limiting the owner's use, enjoyment or right to dispose of the thing. La. C.C. art. 478 provides that "the right of ownership may be subject to a resolutory condition, and it may be burdened with a real right in favor of another person as allowed by law."

A sale is defined in the Civil Code under article 2439 as a contract whereby a person transfers ownership of a thing to another for a price in money. The thing, the price, and the consent of the parties are requirements for the perfection of a sale. The tax sale at issue in the present matter meets the statutory mandate for a sale to occur. As there is no dispute relative to the act or completion of a tax sale in the case at bar, the question of transfer of ownership at the completion of the tax sale is the jus legitmum pronounced by the Louisiana Supreme Court. In order to answer the question presented, the Court need look no further than La. C.C. art. 2456, which states:

> Ownership is transferred between the parties as soon as there is agreement on the thing and the price is fixed, even though the thing sold is not yet delivered nor the price paid.

The property at issue herein was seized and sold for delinquent taxes on June 12, 1995. The price was paid and the tax deed recorded on June 30, 1995. Therefore, on June 12, 1995, full ownership passed to RIPCO.

Further codal authority for the transfer of ownership at the completion of a tax sale is found in the Louisiana statutory scheme governing the collection of ad valorem taxes. A tax sale transfers ownership to the purchaser under La. R.S. 47:2183(A) which states:

> Each state tax collector and ex officio collector of state taxes, and the tax collectors of the municipal authorities of the various towns and city governments and political subdivisions throughout the state, shall execute and sign in person or by deputy, in the name of the state, or other taxing subdivision as the case may be, a deed of sale to purchasers of any real estate sold for taxes, in which he shall relate in substance a brief history of the proceedings had, shall describe the property, state the amount of the taxes, interest, and costs and the bid made for the property, and the payment made to him in cash, cashier's check, certified check, money order, or wire transfer, and **shall sell the property to the purchaser, with the right to be placed in actual possession thereof,** by order of a court of competent jurisdiction, and shall conclude the deed with the statement in boldfaced type that the property shall be redeemable at any time for the space of three years beginning on the day when the deed is filed for record in the conveyance office in the parish in which the property is situated. [Emphasis added]

La. R.S. 47:2185 further states:

> Upon the presentation of a certified copy of a tax deed for immovables to any judge of competent

> jurisdiction (such jurisdiction to be determined by the value of the immovables therein described and not the amount of the taxes), the judge shall in chambers grant an order of seizure and possession, commanding the sheriff to seize such property and place the purchaser in actual possession thereof; a writ of possession shall be issued thereon by the clerk, but the purchaser may take actual possession without such order, with the consent or acquiescence of the tax debtor or otherwise, provided no force or violence shall be used.

Unlike the cases of other State courts of last resort cited by Petitioner herein, the State of Louisiana, through the East Baton Rouge Parish Sheriff, completed its taking and was paid the delinquent taxes on the date of the tax sale. Upon completion of the sale, which transferred ownership to the property to the tax purchaser, the Petitioner became vested with a new limited, real right in the property: the right to redeem the property sold within three (3) years of the tax sale. The right, as a real right, was directly enforceable against the property by the Petitioner without any State action. The Petitioner needed only exercise the right by paying the delinquent taxes, costs and interests to the Sheriff. Failure to exercise the right within three (3) years results in loss of the right. The failure to exercise the right does not result in a loss of the property, as ownership of same was transferred at the 1995 Tax Sale. As the State taking is completed on the date of the tax sale, there exists no Fourteenth Amendment constitutional Due Process claim. The Court has never held that the State owes a citizen notice and an opportunity to be heard prior to the loss or termination of a private right in property as a result of the tolling of a statute of limitation, operation of laches, or operation of other similar rules regulating private property rights.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

CHARLES G. BLAIZE, JR.
MAYHALL & BLAIZE, L.L.C.
5800 One Perkins Place Drive
Suite 2-A
Baton Rouge, Louisiana 70808
(225) 810-4998

Counsel for Respondent